

### **RESTRICTION REQUIREMENT**

A restriction requirement has been made for the reasons beginning on page 2 of the Detailed Action portion of the 24 July 2008 Office Action. Applicant respectfully traverses.

### **PRIOR PROSECUTION - NO SERIOUS BURDEN FOR EXAMINATION**

As traversal, as pointed out in MPEP '803, if a search and an examination of an entire application can be made without serious burden, the Examiner must examine the application on the merits even though the application includes claims to distinct or independent inventions. Applicant's position is that it would not create a serious burden on the part of the USPTO to conduct a (CONTINUED) search and examination of the entire application, i.e., as evidence in support of such position, Applicant respectfully points out the fact that ALL CLAIMS HAVE ALREADY BEEN EXTENSIVELY SEARCHED AND EXAMINED ALREADY WITHOUT SERIOUS BURDEN, AS EVIDENCED BY A SUBSTANTIAL PERIOD OF PRIOR PROSECUTION, INCLUDING EXAMINATION OF ALL CLAIMS WITHIN THE PRIOR OFFICE ACTIONS. As no serious burden has been, or could be, shown, EXAMINATION OF THE ENTIRE APPLICATION IS REQUIRED IN ACCORDANCE WITH THE CONTROLLING PROVISIONS OF MPEP '803.

### **PROVISIONAL ELECTION**

In order to comply with the requirement, Applicant provisionally elects, for prosecution on the merits, Species 1; Embodiment 1; Figs. 1-2 and 4-7; including at least claims 1-2, 4-5 and 7-8. The 23 December 2008 Communication indicates that

the Examiner has a difference of opinion as to the claims readable on the elected species. Applicant respectfully disagrees with such Examiner opinion. In the event that the Examiner's opinion continues that claims 7-8 are not readable on the elected species, the Examiner should examine the claims which he feels are readable on the elected species, while noting that certain ones of the claims (e.g., claims 7-8) were not considered or examined by the Examiner as not being directed (in the Examiner's opinion) to the elected species.

#### **NO ADMISSION - RESTRICTION/ELECTION**

Applicant submits that the instant response (including the comments submitted and the provisional election) is not an admission on the record that the respective species are separately distinct species and/or obvious variants.

#### **CONTINUATION(S)/DIVISIONAL(S) FOR NON-ELECTED SUBJECT MATTER**

Despite any traversal set forth in other parts of this paper regarding any Restriction/Election, one or more related (e.g., continuation/divisional) applications may be filed to pursue subject matter not elected in the present application. Applicant submits that any filing of continuation(s)/divisional(s) should not be taken as any prejudice, admission or disclaimer that the Restriction/Election is correct, but instead, is merely use of separate applications to move the other subject matter through the patenting process.

### **CONTINUATION(S)/DIVISIONAL(S) - DOUBLE PATENTING PROHIBITED**

Regarding any related continuation/divisional application(s) filed to pursue subject matter identical to or consonant with Restriction/Election subject matter not elected in the present application, it is respectfully submitted that the third sentence of 35 U.S.C. 121 and MPEP 804.01 prohibit any double-patenting rejection between this and the related continuation/divisional applications.

### **EXAMINER INVITED TO TELEPHONE**

The Examiner is herein invited to telephone the undersigned attorneys at the local Washington, D.C. area telephone number of 703/312-6600 for discussing any Examiner's Amendments or other suggested actions for accelerating prosecution and moving the present application to allowance.

### **RESERVATION OF RIGHTS**

It is respectfully submitted that any and all claim amendments and/or cancellations submitted within this paper and throughout prosecution of the present application are without prejudice or disclaimer. That is, any above statements, or any present amendment or cancellation of claims (all made without prejudice or disclaimer), should not be taken as an indication or admission that any objection/rejection was valid, or as a disclaimer of any scope or subject matter. Applicant respectfully reserves all rights to file subsequent related application(s) (including reissue applications) directed to any/all previously claimed limitations/features which have been subsequently amended or cancelled, or to any/all limitations/features not yet claimed, i.e., Applicant continues (indefinitely) to

maintain no intention or desire to dedicate or surrender any limitations/features of subject matter of the present application to the public.

### **CONCLUSION**

In view of the foregoing amendments and remarks, Applicant respectfully submits that the application is now in condition for allowance.

To the extent necessary, Applicant petitions for an extension of time under 37 CFR '1.136. Authorization is herein given to charge any shortage in the fees, including extension of time fees and excess claim fees, to Deposit Account No. 01-2135 (Case No. 503.39221CX1) and please credit any excess fees to such deposit account.

Respectfully submitted,

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